Appl. No. 09/516,331
Amdt. sent April 29, 2004
Reply to Office Action of January 30, 2004

PATENT

REMARKS/ARGUMENTS

Claims 1 - 57 are pending.

Claim 55 was rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out distinctly claim the subject matter.

Claims 1 - 4 and 8 - 9 were rejected under 35 U.S.C. § 102(e) for allegedly being anticipated by Gai, U.S. Patent No. 6,651,101.

Claims 10 - 12, 15 - 30, 34 - 39, and 51 - 57 were rejected under 35 U.S.C. § 103(a) for allegedly being unpatentable over Gai.

It is noted with appreciation that claims 41 and 43 - 50 are allowed, and further that claims 5 - 7, 13, 14, 32, 33, 40, and 42 are deemed to recite allowable subject matter. Nonetheless, it is earnestly believed that independent claims 1, 10, 21, 31, and 51

The drawings were deemed to be informal drawings.

A number of claim objections were raised. The Examiner's suggestions for corrective language is appreciated.

Drawings

The drawings that were submitted at the time of filing of the instant application were designated as formal drawings on the accompanying transmittal sheet. The drawings are believed to conform to the requirements under 37 C.F.R. § 1.84. If there are any deficiencies in the drawings, however, counsel for Applicant respectfully requests they be identified so that proper corrective action can be taken.

Claim Objections

A number of claim objections were raised. Some of the claims have been amended per the Examiner's appreciated suggestions to overcome the objections. However, some suggested claim amendments appear to be improper.

Claim 21: In lines 3 and 4 of claim 21 as originally filed, a suggestion was made to insert "said" before "data". The relevant portions of claim 21 include:

(1) "a data server configured to transmit data packets"; and

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(2) "at least one network device configured to receive data packets ... and to

transmit data packets".

The claimed elements in claim 21 include "a data server" and "at least one network device". The recitation of "data packets" is used to describe the function of "a data server", namely for instance, that the data server is configured to transmit data packets. Similarly, "data packets" is used to describe the function of the claimed element "at least one network device", which is to receive and to transmit data packets. It is earnestly believed therefore that the definite article "said" is not necessary in this situation.

IDS References

Five references were submitted in an IDS mailed June 13, 2000, and received in the PTO on June 16, 2000. Four of the references, designated AG, AH, AI, and AJ, were previously submitted at the time of filing of the instant application, and were inadvertently re-submitted in the June 13 IDS. A fifth reference designated AK, however, had not been submitted in an earlier IDS. The fifth reference has not been considered by the Examiner. Consideration of the AK reference in the June 13 IDS is respectfully requested.

Twelve references were submitted in an IDS mailed May 30, 2002, and received in the PTO on June 5, 2002. A review of the instant Office action does not show that these references have been considered. Counsel for Applicant respectfully requests consideration of the references in the May 30 IDS.

The Present Invention

The present invention is directed to a data delivery system in a communication network. An aspect of the present invention as recited in claim 1 as originally filed, for example, is "transmitting first information from said data server to said target network device [where the 1st information comprises] at least one new network device attribute" and "transmitting second information from said data server to said target network device," wherein changing the current network device to use the new attribute occurs "in response to receiving said second information." Kindly see also independent claims 10 and 21 as originally filed, and independent claim 31 as amended.

Independent claim 51 as originally filed is directed to "a data server" that communicates "first information" to a network device. The data server then communicates "second information" to the network device which "responds by setting its QoS setting in accordance with said first information."

The Gai Reference: Section 102 Rejection of claims 1 - 4, 8, and 9

Gai teaches "a method and apparatus for identifying specific traffic flows originating from a network entity and for applying predetermined policy or service treatments to those flows." *Summary at col. 4, lines 36 - 39.* Gai describes an initialization process from column 7, line 65 to column 8, line 14. A careful review of this portion of Gai reveals processing which takes place entirely within host server 222 (Fig. 2). The StartUp()API call 410 is shown in Fig. 4A and interacts between program 224 and component 226, both of which are elements of the host server 222. Contrary to the assertion made in the Office action, therefore, this portion of Gai does not show "transmitting first information from said data server to said target network device [where the 1st information comprises] at least one new network device attribute." *Claim 1.* For at least this reason, the Section 102 rejection is believed to be overcome.

Gai describes initial processing that is performed in anticipation of traffic flow at column 8, lines 15 to 33. A NewBindings() API call 412 is made which generates a traffic flow data structure 234 in the flow declaration component 226. Again, as can be seen in Fig. 4A, this occurs entirely within the host server 222. The description from column 8, line 34 to column 10, line 57 appears to describe different ways of loading the traffic flow data structure 234 (see especially, column 10, lines 54 to 57). As can be seen from Fig. 2, the traffic flow data structure 234 exists within the host server 222 in a memory 232. Contrary to the assertion made in the Office action, therefore, this portion of Gai does not show the recited "storing said at least one, new network device attribute in said target network device." *Claim 1.* For at least this reason, the Section 102 rejection is believed to be overcome.

Column 9, lines 1 - 5 of Gai appear to have been relied on in the Office action for teaching "transmitting second information from said data server to said target network device." The Set API calls 414 described by Gai are shown in Fig. 4A. These calls all take place between

the program 224 and the component 226, which as shown in Fig. 2 exist within the host server 222. This simply does not teach "transmitting second information from said data server to said target network device." *Claim 1.* For at least this reason, the Section 102 rejection is believed to be overcome.

The Gai Reference: Section 103 Rejections of Claims 10 - 12, 15 - 31, 34 - 39, and 50 - 57

The Section 103 rejections were based on Gai. However, as discussed above, the foregoing aspects of the present invention are not taught by Gai. Independent claims 10, 21, 31, and 51 recite similar subject matter as in independent claim 1. Consequently, Gai does not teach these aspects of the present invention as recited in claims 10, 21, 31, and 51; nor does Gai render obvious these aspects of the present invention. The Section 103 rejection of the claims is therefore believed to be overcome.
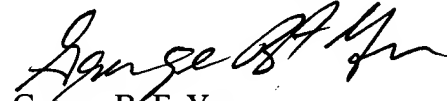
CONCLUSION

In view of the foregoing, all claims now pending in this Application are believed to be in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

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If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

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